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"Gram Shop" Liability: Holding Drug Dealers Civilly Liable for Injuries to Third Parties and Underage Purchasers

Michael E. Bronfin[†]

Early on a fall morning in 1990, a 37-year-old dancer returned home after dropping off her two children at school.¹ Before she could react, an intruder charged her.² He beat and stabbed her more than twenty times, leaving her to die on the kitchen floor.³ Fortunately, the dancer, Donna Prete, survived and the attacker, Anthony Gentile, was arrested. Gentile confessed to the crime but explained that he was high on cocaine at the time of the assault.⁴ He claimed that a drug dealer, Edward Laudano, sold him the cocaine that caused him to attack Prete.⁵ Because Gentile was unable to pay damages, should Prete be able to recover from Laudano for the damages caused by the drug dealer's illegal sale, or must the injury lie where it has fallen?

The common law, federal statutes, and almost all state laws do not impose civil liability upon drug dealers.⁶ Thus, innocent victims—third parties and underage purchasers⁷—injured by the sale of illegal narcotics have been unable to recover from the drug dealer. By failing to hold drug dealers civilly liable, the law forgoes an opportunity to force drug dealers to internalize the

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¹ Rosemary P. McNicholas, *Judge Allows Strict-Liability Claim Against Alleged Drug Dealer; Jury Will Decide if Selling Cocaine is an Ultrahazardous Activity*, The Connecticut Law Tribune 1 (Feb 15, 1993).

² Id.

³ Id.

⁴ Id.

⁵ McNicholas, The Connecticut Law Tribune at 1 (cited in note 1).

⁶ On February 24, 1994, Michigan enacted the first state law holding drug dealers in the state civilly liable for injury resulting from drug sales. Mich Stat § 691.160 *et seq* (West 1994). See notes 41, 60. Additionally, the case described above, *Prete v Laudano*, 1993 WL 21417 (Conn Super 1993), is currently being litigated in Connecticut. See notes 1-5 and accompanying text.

⁷ The term "underage purchaser" as used in this Comment refers to drug purchasers who have not yet reached the age of majority. The alternative term, "minor drug purchaser," is confusing because it can be misunderstood to refer to one who purchases only a small amount of drugs, or to an infrequent drug purchaser.

costs of their illegal activities. Because the direct culprits, the drug users, frequently do not have the financial resources to compensate their victims, a law holding drug dealers liable for injuries to third parties would both deter the sale of illegal narcotics and allow these victims to recover more fully for their injuries. Similarly, a law holding drug dealers liable to underage purchasers would deter sales to these innocent parties.

This Comment proposes a standard that would hold drug dealers civilly liable for injuries to innocent parties—specifically third parties and underage purchasers of drugs—while barring recovery for adult drug purchasers. Part I examines the common law's failure to hold drug dealers liable for injuries caused to third parties and underage drug purchasers. Part II proposes a legislative solution allowing third parties and underage drug purchasers to recover from drug dealers for their injuries. Finally, Part III explores the parallels between modern common law tort liability and the proposed statute, emphasizing the proposed statute's ability to achieve the dual public policy objectives of deterring drug sales and fully compensating innocent victims for their injuries.

I. THE FAILURE OF THE COMMON LAW TO PROVIDE RECOVERY FOR THIRD PARTIES AND UNDERAGE PURCHASERS

The common law does not allow third parties or underage drug purchasers to recover damages from a drug dealer for injuries caused by the illegal sale of drugs. At first glance, three common law tort doctrines seemingly allow recovery: (1) strict liability for abnormally dangerous activity; (2) strict product liability; and (3) traditional negligence liability. Each of these torts, however, contains loopholes allowing drug dealers to escape liability. Thus, traditional common law doctrines fail both to deter potential drug dealers and to provide adequate means of recovery to the victims of these dealers.

A. Abnormally Dangerous Activity

Third parties and drug purchasers may not recover damages from a drug dealer under the tort doctrine of liability for abnormally dangerous activity. The Restatement (Second) of Torts imposes strict liability on those who engage in an abnormally

dangerous activity.⁸ The Restatement lists six factors relevant to determining whether an activity is abnormally dangerous:

- (a) the existence of a high degree of risk of some harm to the person[;]
- (b) the likelihood that the harm that results from [the activity] will be great;
- (c) an inability to eliminate the risk by the exercise of reasonable care;
- (d) the extent to which the activity is not a matter of common usage;
- (e) the inappropriateness of the activity to the place where it is carried on; and
- (f) the extent to which [the activity's] value to the community is outweighed by its dangerous attributes.⁹

In order to recover, a victim must establish that the cumulative weight of these factors demonstrates that the activity at issue is abnormally dangerous.¹⁰

Under the Restatement standard, the sale of narcotics appears to qualify as an abnormally dangerous activity for the following reasons: (a) drugs are inherently dangerous substances that can produce permanent mental and physical injury;¹¹ (b) because they impair judgment and motor skills, drugs may lead to accidents, injuries, and violent outbursts;¹² (c) given the nature of these substances, it is impossible to eliminate the risks involved in the recreational use of drugs;¹³ (d) while the sale of illegal drugs is prevalent, these sales cannot be described as "common" and remain prohibited by law; (e) except in certain professionally supervised medical contexts, no "appropriate" place or location exists for indulging in the use of illegal drugs; and (f) through legislative enactment, communities have determined

⁸ Restatement (Second) of Torts § 519 (1977).

⁹ Id. at § 520.

¹⁰ "Whether the activity is an abnormally dangerous one is to be determined by the court, upon consideration of all the factors listed in this Section, and the weight given to each that it merits upon the facts in evidence." Id. at § 520 comment 1.

¹¹ Ian R. Tebbett, *A Pharmacist's Guide to Drugs of Abuse*, 134 *Drug Topics* 58 (Sept 3, 1990). Drug use can produce vomiting, diarrhea, weight loss, loss of attention and concentration, impaired short-term memory, lack of coordination, convulsions, cardiac failure, cerebral hemorrhaging, paranoia, psychosis, flashbacks, depression, violence, amnesia, and death. Id.

¹² Id. Barbiturates, lysergic acid diethylamide ("LSD"), and phencyclidine phenylcyclohexyl piperidine ("PCP") all have these side effects.

¹³ Id.

that the sale of illegal drugs has no legitimate value to society and, therefore, its dangers cannot be justified.

The courts, however, have generally hesitated to extend strict liability beyond traditional abnormally dangerous activities such as blasting, storing explosives, and aerial spraying. For example, one court refused to extend strict liability to well-drilling, holding that only a "few exceptions" qualify as abnormally dangerous activities.¹⁴ Another court similarly refused to extend strict liability to experimental medical drugs, holding that a wrongdoer can be held liable only for harms resulting from geographic proximity to the abnormally dangerous act.¹⁵ Thus, case law suggests that no court would recognize drug dealing as an abnormally dangerous activity.¹⁶

Although application of the doctrine of strict liability for abnormally dangerous activity might allow third parties injured as a result of drug sales to recover from drug dealers,¹⁷ other factors would bar a drug purchaser from recovering. Those engaged in an abnormally dangerous activity are liable for the "unexpected . . . innocent, negligent or reckless conduct of a third person," but they are not liable to people whose own intentional actions contribute to their injury.¹⁸ Thus, the common law would bar recovery for drug purchasers who, by virtue of a voluntary purchase, have assumed the risk of using drugs.

While some courts have found that drug addicts and those obviously under the influence of a drug have no free will and thus cannot voluntarily purchase a drug,¹⁹ the majority of courts

¹⁴ *Trull v Carolina-Virginia Well Co.*, 264 NC 687, 692, 142 SE2d 622, 625 (1965). Recently, one court refused to declare sexual activity transmitting the HIV virus an abnormally hazardous activity because it was outside the scope of the doctrine, which covers activities "such as blasting, storing of inflammable liquids, etc." *Doe v Johnson*, 817 F Supp 1382, 1398 (W D Mich 1993).

¹⁵ *Gaston v Hunter*, 121 Ariz 33, 48, 588 P2d 326, 341 (Ariz Ct App 1978).

¹⁶ However, as previously noted, a Connecticut court is allowing a drug sale case to proceed under this theory of recovery. See *Prete v Laudano*, 1993 WL 21417 (Conn Super 1993). See also note 6 and accompanying text.

¹⁷ In *Prete v Laudano*, the plaintiff, a third party, is suing the drug dealer for injuries inflicted by one of his customers under an ultra-hazardous claim. The plaintiff recently passed her first hurdle in the case when a Connecticut court rejected the defendant's pretrial effort to dismiss the case, holding that the plaintiff should be given an opportunity to prove the elements of the tort. *Id.*

¹⁸ Restatement (Second) of Torts §§ 522-23 (cited in note 8).

¹⁹ In *Flandermeyer v Cooper*, 85 Ohio St 327, 98 NE 102 (1912), a pharmacist was held liable to the wife of a man to whom he had sold morphine. The court held that once the husband was addicted to the drug "he became merely the instrument, or the conduit through which this treacherous poison was transferred from the druggist's hands into his own system." *Cooper*, 85 Ohio St at 344-45, 98 NE at 106. If a drug addict is viewed as a

have maintained that all adults are responsible for their actions.²⁰ Therefore, an adult illegal drug purchaser would most likely be barred from recovering against a drug dealer in an abnormally dangerous activity suit. Similarly, underage purchasers could be barred from recovery if the court were to find that the underage purchasers acted intentionally.²¹

Thus, the doctrine of strict liability for abnormally dangerous activity does not allow injured parties fully to recover damages from a drug dealer. The courts are unlikely to declare drug sales an "abnormally dangerous activity." Moreover, even if a court were to find a drug sale to constitute an abnormally dangerous activity, recovery for resulting injuries might be imperfect: because adult drug purchasers would properly be barred from recovery and third parties would be permitted to recover, underage purchasers might be unable to recover.

B. Strict Product Liability

Currently, neither a third party nor a drug purchaser can recover under the common law tort of strict product liability. The Restatement (Second) of Torts defines strict product liability as follows:

One who sells any product in a defective condition unreasonably dangerous to the user or consumer . . . is

mere "conduit," then he does not voluntarily purchase the drug. In the dram shop context, some courts have imposed common law liability where a tavern owner continued to provide alcohol to "obviously intoxicated persons [or] persons in a state of helplessness." *Young v Caravan Corp.*, 99 Wash 2d 665, 658, 663 P2d 834, 836 (1983). See also *El Chico Corp. v Poole*, 732 SW2d 306, 310 (Tex 1987) (holding that an intoxicated person is not able-minded). A dram shop is a "drinking establishment where liquors are sold to be drunk on the premises; a bar or saloon." *Black's Law Dictionary* 494 (West, 6th ed 1990).

²⁰ "[The pharmacist's] duty . . . does not encompass protecting against this plaintiff's own careless actions. Plaintiff was not a minor. She was aware of what she was doing and even assisted the pharmacist in obtaining the drugs illegally. She was not mentally deficient . . . at the time she began soliciting drugs from [the pharmacist. Thus, her comparative fault should not be totally disregarded.]" *Clair v Paris Road Drugs, Inc.*, 573 S2d 1219, 1225 (La App 1991). In one dram shop case, the court maintained that adults "drunk or sober [are] responsible for their own torts." *Williamson v Old Brogue, Inc.*, 232 Va 350, 353, 350 SE2d 621, 623 (1986). See also *Pappas v Clark*, 494 NW2d 245, 248 (Iowa Ct App 1992); *Ohio Casualty Insurance Co. v Todd's Tavern*, 813 P2d 508, 510-11 (Okla 1991).

²¹ Some courts have explicitly made the distinction between minors and adults. See *Clair v Paris Road Drugs, Inc.*, 573 S2d at 1225 (denying plaintiff's cause of action but suggesting it might treat a minor differently); *Trujillo v Trujillo*, 104 NM 379, 381, 721 P2d 1310, 1312 (NM Ct App 1986).

subject to liability for physical harm thereby caused to the ultimate user or consumer, . . . if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.²²

Applying this rule to illegal drug transactions poses two problems. First, although illegal drugs are inherently "unreasonably dangerous to the . . . consumer,"²³ the Restatement explains that simply because drugs and other products cannot be "made entirely safe for all consumption" does not render the producer or seller strictly liable.²⁴ Only when the article sold is "dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it" will the product be deemed unreasonably dangerous.²⁵ Because the ordinary adult drug consumer presumably knows the dangers posed by the use of illegal drugs,²⁶ a drug dealer would only be liable under this theory if she had sold a drug more dangerous than normal.²⁷ It is unclear whether the courts would hold that minors, like adults, can reasonably be expected to know the dangers of the drug that they purchase.

Second, because courts are loathe to enforce illegal contracts, they probably would not permit recovery based upon a "defect" in an item exchanged through an illegal transaction. No cases exist in which a court has held the seller of any illegal contraband civilly liable under the tort of strict product liability. A court would probably decline to extend strict liability to an injured purchaser (whether underage or adult) of illegal narcotics, or even to a third party injured by an illegal transaction.

²² Restatement (Second) of Torts § 402A(1) (1965).

²³ See Tebbett, 134 Drug Topics at 58 (cited in note 11).

²⁴ Restatement (Second) of Torts § 402A comment i (cited in note 22).

²⁵ Id.

²⁶ In another area, one court rejected plaintiffs' claims that cigarettes are abnormally dangerous where the plaintiffs had developed lung cancer from smoking the defendant's cigarettes. *Gunsalus v Celotex Corp.*, 674 F Supp 1149, 1158-59 (E D Pa 1987).

²⁷ For example, the drug dealer might be liable if she made marijuana more dangerous by lacing it with PCP or if she sold heroin that was significantly more pure than normal.

C. Traditional Common Law Negligence

An injured third party or an underage drug purchaser has never attempted to recover for injuries from a drug dealer by alleging traditional common law negligence. Presumably, an injured party cannot satisfy the elements required to establish liability under a theory of negligence.

The Restatement (Second) of Torts defines negligence as the invasion of the interest of another, if:

- (a) the interest invaded is protected against unintentional invasion, and
- (b) the conduct of the actor is negligent with respect to the [injured party], or a class of persons within which he is included, and
- (c) the actor's conduct is a legal cause of the invasion, and
- (d) the other has not so conducted himself as to disable himself from bringing an action for such invasion.²⁸

This test requires the injured party to prove that the defendant (1) owed a duty of care to the plaintiff (2) that she breached (3) which was the legal cause (4) of the harm.²⁹ To serve as the proximate cause of harm, the harm produced by the actor's conduct must not have been "highly extraordinary."³⁰ Thus, the foreseeability of the harm bears upon whether the defendant's initial action or lack of action was the proximate cause of the harm, which in turn determines whether the actor was negligent.³¹

At common law, a court would not hold a drug dealer liable for an injury that she inflicted upon an adult drug purchaser. Even assuming that a drug dealer owed a duty of care to her customers and that she breached this duty, a court would probably not view the sale of the drugs as the proximate cause of the injury; rather, the consumption of the drugs would serve as the proximate cause of the injury.

Dram shop liability provides a good analogy for examining liability in illegal drug transactions.³² At common law, tavern

²⁸ Restatement (Second) of Torts § 281 (cited in note 22).

²⁹ Stuart M. Speiser, Charles F. Krause, and Alfred W. Gans, 2 *The American Law of Torts* § 9:1 at 994-95 (Lawyer's Cooperative Publishing Co., Inc., 1985); Edward J. Kionka, *Torts in a Nutshell* § 4-3 at 77 (West, 1977).

³⁰ Restatement (Second) of Torts § 435 (cited in note 22).

³¹ Kionka, *Torts in a Nutshell* § 4-2 at 66 (cited in note 29).

³² A dram shop is "[a] drinking establishment where liquors are sold to be drunk on

owners were not liable for injuries caused by their intoxicated patrons' actions because "the consumption, not the sale or service of alcohol, was viewed as the sole proximate cause" of the injury.³³ The courts deemed the purchaser's own actions as the cause of any injury to the purchaser.³⁴ Under this rationale, an adult drug purchaser would be unable to recover from a drug dealer. It is also likely that a court would bar underage purchasers from recovering under a negligence theory.³⁵

A third party would similarly be barred from recovery for an injury caused by an illegal drug sale. Under common law dram shop liability, third parties injured by an intoxicated patron cannot recover from the tavern owner because their injuries are deemed unforeseeable.³⁶ Similarly, in a tort arising out of an illegal drug transaction, a court would likely hold that an injury to a third person was too unpredictable for the drug dealer to foresee. Thus, under a theory of traditional common law negligence, a court would not permit recovery by adult or underage purchasers or by third parties seeking relief from a drug dealer.

In sum, third party victims and underage purchasers cannot utilize the tort of common law negligence to recover from drug dealers for their injuries. Moreover, because no statute currently provides for this recovery,³⁷ drug dealers need not compensate these victims for their injuries. To compensate these victims, this Comment proposes a statute that would require drug dealers to internalize the costs of injuring third parties or underage purchasers of drugs by imposing upon these dealers liability for damages.

the premises; a bar or saloon." *Black's Law Dictionary* at 494 (cited in note 19).

³³ *El Chico Corp. v Poole*, 732 SW2d 306, 309 (Tex 1987). See also *Brigance v Velvet Dove Restaurant, Inc.*, 725 P2d 300, 302 (Okla 1986).

³⁴ "The death of the deceased was not 'caused' so much by the wrongful act of the defendants in selling him whiskey as by his own act in drinking it after being sold to him." *King v Henkie*, 80 Ala 505, 510 (1876).

³⁵ See *Winters v Silver Fox Bar*, 71 Haw 524, 536, 797 P2d 51, 56-57 (1990) (holding that because the minor voluntarily became intoxicated, his mother was barred from recovering from the alcohol provider for an injury resulting from his intoxication); *Yancey v Beverage House of Little Rock, Inc.*, 291 Ark 217, 723 SW2d 826 (1987) (refusing to modify the common law bar to recovery in dram shop actions, and holding that even though the tavern had illegally served the minor who was subsequently involved in an accident, the minor's acts were the proximate cause of the injuries); *Vadasy v Bill Feigel's Tavern, Inc.*, 88 Misc 2d 614, 616, 391 NYS2d 32, 34 (NY Sup Ct 1973), aff'd, 391 NYS2d 999 (NY App Div 1977).

³⁶ *El Chico Corp.*, 732 SW2d at 309.

³⁷ The one exception is Michigan, which recently enacted a statute to provide for such recovery. See Mich Comp Laws Ann § 691.160 *et seq* (West 1994). See also notes 6 and 60.

II. A PROPOSED STATUTE TO COMPENSATE INJURED THIRD PARTIES AND UNDERAGE PURCHASERS

This Comment proposes that state legislatures enact statutes rendering drug dealers civilly liable to innocent victims—third parties and underage purchasers—for any injury arising from the dealer's sale of the drugs.³⁸ Under this statute, a third party could recover from the drug dealer if she could prove (1) that the drug dealer's illegal drugs were used by the party who injured her, and (2) that these drugs contributed to the party's action that resulted in her injury. An underage purchaser could recover if she could prove that the drug dealer's illegal drugs contributed to her actions that caused her injury. The proposed statute, however, would provide no relief to adult drug purchasers; under the statute, these parties would be deemed voluntarily to have assumed the risks attending drug use.

This statute represents an improvement on the current law for two reasons. First, it allows the innocent victims of drug sales—both third parties and underage purchasers—to recover for their injuries. Currently, third parties must bear the costs of their injuries unless they are able to recover in an ordinary tort suit directly from the drug user, who frequently lacks the resources to compensate the victim. Victims are more likely to receive full compensation from wealthier drug dealers. Underage drug purchasers and their families would similarly benefit under the statute. Second, this statute creates the threat of significant potential liability for drug dealers. The specter of liability might deter potential drug dealers from selling illegal narcotics, especially to minors.

A. A Statute Based upon Common Law Principles of Negligence and Dram Shop Liability

The proposed statute does not represent a dramatic change in the current state of the law. It merely applies the rationale behind dram shop laws to the sale of illegal drugs. Dram shop laws were designed to curb alcohol-related torts by holding bar owners civilly liable for the actions of their intoxicated patrons,

³⁸ Alternatively, Congress could enact this as a federal statute rather than the individual states taking such action. A federal statute would create uniformity among the states and allow for a more rapid development of legal precedent. Federal drug laws are common, and the proposed statute would not be a dramatic departure from traditional federal drug legislation. Because the proposed statute is modeled after state dram shop law, however, a state legislature is more likely to enact this model statute.

thereby curing perceived inadequacies in the common law.³⁹ Similarly, the proposed statute seeks to deter drug sales and thus to curb drug-related torts by imposing liability upon the drug dealers.

The proposed statute would codify a principle inherent in the modern common law of negligence: one who harms another when she breaches a duty of care should compensate the victim for her injuries. State and federal criminal law already establish that individuals owe a duty to refrain from selling or dealing in illegal drugs. The proposed statute imposes civil liability upon a drug dealer who violates this statutory duty and whose sale of narcotics proximately causes injury to an underage purchaser or a third party.⁴⁰

In order to recover, the injured third party or underage purchaser would be required to prove that the drug dealer's narcotics proximately caused the injury. The proposed statute would require a third party to establish not only that the drug user who injured her had used the drug dealer's product, but also that the drug use actually contributed to injury by increasing the likelihood that the party would injure others.⁴¹ Similarly, in order to

³⁹ The first dram shop laws were enacted in the mid-1800s as precursors to the temperance movement. After prohibition, many of these statutes were repealed. In the mid-1970s, state legislatures turned to civil liability to control drunk driving. Daphne D. Sipes, *The Emergence of Civil Liability for Dispensing Alcohol: A Comparative Study*, 8 Rev Litig 1, 3-4 (1988).

⁴⁰ This construction tracks the common law notion of negligence *per se*. Negligence *per se* is defined as "[c]onduct . . . which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, . . . because it is in violation of a specific statute As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, . . . constitutes [negligence *per se*]." *Black's Law Dictionary* at 1035 (cited in note 19). Because drug control statutes have made the sale of certain drugs illegal, a legal duty has been established, and under the proposed statute any sale would demonstrate negligence and thus render the drug dealer civilly liable.

This regime would not differ greatly from a strict liability statutory regime. Strict liability has been defined as "[l]iability without fault." *Id.* at 1422. Under a strict liability statute, the sale of illegal drugs would also render the drug dealer liable.

⁴¹ The Michigan statute, "The Drug Dealer Liability Act," does not require an injured third party to prove that the dealer's drugs were the actual drugs used by the attacker. Rather, the plaintiff need only establish that "(a) [t]he defendant was participating in the illegal marketing of the [particular type of drug] at the time the [drug-using actor] obtained or used that [type of drug] [and] (b) [t]he [drug-using actor] obtained or used the [drug], or caused the injury, within the defendant's market area." Mich Comp Laws Ann § 691.1608 (West 1994). The statute states that any defendant convicted of illegally marketing drugs will be "conclusively presumed" to have participated in illegal marketing of the drug for the two years preceding or following the date of the defendant's participation or conviction and at the following locations: "in each county in which the defendant resides, attends school, is employed, or does business[.]" *Id.* Clearly the Michigan standard is

recover from the drug dealer, an underage drug user would be required to prove that her use of drugs increased the likelihood that she would injure herself.⁴² Thus, the proposed statute applies modern common law negligence principles to a contemporary social phenomenon.

This proposed statute models itself after modern dram shop common law. Current drug control statutes are designed to protect society from the dangers of drug use. Similarly, alcohol beverage control ("ABC") statutes are designed to prevent drunk driving and other threats to the general public posed by alcohol consumption.⁴³ In light of the public policy underlying these statutes, many courts have held that ABC laws allow third party victims of intoxicated patrons to recover from tavern owners, even though the statute itself does not specifically authorize such recovery.⁴⁴ As one court noted: "There seems to be little rationale to say that it is a crime to [violate alcohol control statutes] . . . for which you may be fined and/or imprisoned, but that you cannot be held civilly liable for doing so."⁴⁵ It is similarly illogical to deny the victim of an illegal drug transaction recovery from the drug dealer. Thus, a court employing identical reasoning could interpret existing criminal drug control laws as implicitly allowing civil recovery for third parties. The proposed statute would merely apply this line of reasoning to the illegal narcotics field.

much more lenient than the proposed statute's proximate cause standard.

⁴² The proposed statute would not require that the alleged drug dealer be convicted of a drug sale. However, the injured plaintiff would be required to convince the trier of fact that the defendant had actually sold or given the drugs to the person responsible for the injury. If the alleged drug dealer were convicted of the drug sale, this task would be significantly easier than if she were not convicted.

⁴³ Unlike dram shop laws, ABC statutes do not contain specific provisions imposing civil liability upon an alcohol provider or seller. These statutes explicitly establish only criminal penalties. However, many courts and commentators use the term "dram shop statutes" to refer to both ABC laws and true dram shop laws that explicitly provide for civil liability. See *Cuevas v Royal D'Iberville Hotel*, 498 S2d 346, 348 (Miss 1986).

⁴⁴ The Supreme Court of Texas held that "[t]he safety and well being of . . . members of the general public . . . is one of the express policies of the Alcoholic Beverage Code . . .," and established a standard of care for tavern owners in common law negligence claims by third parties. *El Chico Corp. v Poole*, 732 SW2d 306, 312 (Tex 1987). The Supreme Court of Oregon similarly held that one of the Oregon Liquor Control Act's purposes "is to protect the 'safety' and 'health' of other 'people of the state,' including persons who may be killed or injured by inebriated minors." *Davis v Billy's Con-Teena, Inc.*, 284 Or 351, 356, 587 P2d 75, 77 (1978) (footnote omitted). See also *Sipes*, 8 Rev Litig at 36 (cited in note 39).

⁴⁵ *Montgomery v Orr*, 130 Misc 2d 807, 813, 498 NYS2d 968, 973 (NY Sup Ct 1986).

The proposed statute would also allow underage drug purchasers to recover from drug dealers. The courts presently disagree as to whether state dram shop or alcohol control statutes allow minors who consume alcohol to recover from alcohol suppliers for their injuries. Some courts have barred such recovery. These courts have reasoned that because statutes exist that prohibit minors from purchasing alcohol, the minors should be barred from recovering against the alcohol vendor for the consequences of the minors' own criminal acts.⁴⁶ Other courts have held that because state alcohol control laws are designed to protect minors, minors should be allowed to recover regardless of their complicity. Focusing upon the statutes' specific prohibition on sales to minors, these courts have held that the legislatures have determined "that minors cannot safely handle alcohol" and thus have chosen to make minors a protected class.⁴⁷

These courts have stressed that alcohol providers owe minors a duty to refrain from selling alcohol to them because minors are unable to make rational decisions concerning their use of alcohol.⁴⁸ As the Supreme Court of Alaska explained, the state's alcohol liquor control statute's purpose in prohibiting sales to minors

was, in part, to protect minors from the effects of alcohol. It was based on an assumption that minors are

⁴⁶ "[W]e believe it is inappropriate to use [the ABC statute] as a basis for civil liability by licensees to the underage minor. [Another statute] prohibits minors from purchasing or acquiring alcoholic liquor and provides a penalty for the violation (a fine). It would be inconsistent with apparent legislative policy to reward the violator with a cause of action based upon his or her conduct which the legislature has chosen to prohibit and penalize." *Miller v City of Portland*, 288 Or 271, 279, 604 P2d 1261, 1265 (1980) (footnotes omitted).

⁴⁷ *Chausse v Southland Corp.*, 400 S2d 1199, 1203 (La Ct App 1981). See also *Rappaport v Nichols*, 31 NJ 188, 201; 156 A2d 1, 8 (1959) ("The Legislature has in explicit terms prohibited sales to minors as a class because it recognizes their very special susceptibilities and the intensification of the otherwise inherent dangers when persons lacking in maturity and responsibility partake of alcoholic beverages."); *Prevatt v McClennan*, 201 S2d 780, 781 (Fla Dist Ct App 1967); *Young v Caravan Corp.*, 99 Wash 2d 665, 660, 663 P2d 834, 837 (1983).

⁴⁸ "A minor by reason of his or her immaturity is not 'ablebodied' to be able to drink or to make informed judgments Therefore, the fault is not so much that of the minor, but that of the supplier." *Montgomery*, 130 Misc 2d at 812, 498 NYS2d at 973. "In view of the legislative determination that minors are incompetent to assimilate responsibly the effects of alcohol and lack the legal capacity to do so, logic dictates that their consumption of alcohol does not, as a matter of law, constitute the intervening act necessary to break the chain of proximate causation and does not, as a matter of law, insulate one who provides alcohol to minors from liability for ensuing injury." *Ely v Murphy*, 207 Conn 88, 95, 540 A2d 54, 58 (1988).

relatively incapable of preventing themselves from abusing that dangerous drug. It would run counter to the purpose on which we acted in adopting the statute as a negligence standard, and thus to the policy of the statute itself, to hold that a minor is barred from maintaining an action by his own illegal role in the liquor's acquisition. As between the seller and the minor, it is the seller who is the responsible party in the transaction.⁴⁹

This line of reasoning also applies to analyzing state and federal laws prohibiting drug sales. While federal law prohibits drug sales to both adults and minors, federal law imposes penalties two to three times greater for selling illegal drugs to those under the age of twenty-one.⁵⁰ Also, federal law imposes higher penalties for selling illegal narcotics around schoolyards and playgrounds.⁵¹ Through these provisions, Congress intended to protect children by imposing stiffer sanctions to deter drug sales to children.⁵²

This heightened concern about underage drug purchasers makes sense for two reasons. First, because of their youth, minors are less able to judge the risks involved in the recreational use of narcotics. Similar concerns suggest that minors are incapable of making informed, truly voluntary decisions about alcohol consumption; thus, their use of alcohol neither constitutes contributory negligence nor breaks the chain of proximate causation. Under this logic, underage purchasers of illegal drugs should be allowed to recover civil damages from drug dealers.

⁴⁹ *Morris v Farley Enterprises, Inc.*, 661 P2d 167, 171 (Alaska 1983).

⁵⁰ See 21 USC § 859(a), (b) (West 1988 & Supp 1993) (stating that first offenders are subject to twice the maximum punishment and parole time for selling to minors as compared to adults, and that second offenders are subject to three times the maximum punishment and at least three times the maximum parole with a minimum one year imprisonment). Similarly, California imposes heavier sentences upon defendants convicted of selling drugs to minors: "If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court." Cal Health and Safety Code § 11353.1(a)(3) (West 1991).

⁵¹ See 21 USC § 860 (West 1988 & Supp 1993) (formerly 21 USC § 845).

⁵² In explaining the drug-free school zone provision in the Comprehensive Drug Abuse Prevention and Control Act of 1970, a district court maintained that the provision was "designed to protect schoolchildren from the direct and indirect dangers posed by the narcotics trade [and] 'Congress clearly intended to keep [drugs] out of the easy reach of school-age children.'" *United States v Cunningham*, 615 F Supp 519, 520 (S D NY 1985), quoting *United States v Nieves*, 608 F Supp 1147, 1149 (S D NY 1985).

Second, the inability of minors to evaluate the risks associated with recreational drug use, coupled with the severe peer pressure on minors to experiment with drugs, makes deterring drug use by minors more difficult than deterring use among adults.⁵³ Because it is more difficult to deter a minor from purchasing and using drugs, the proposed statute would concentrate on deterring dealers from selling drugs to minors.

The common law bars adult drug purchasers from recovering for their injuries, and the proposed statute would continue this regime. The courts have traditionally barred recovery by an adult actor for harms caused by her own voluntary illegal actions. For example, a court refused to allow a wife to recover from a pharmacist who provided prescription drugs to her husband, who had illegally forged prescriptions. The court barred recovery because

"a person cannot maintain an action if, in order to establish his cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party, or to maintain a claim for damages based on his own wrong or caused by his own neglect, . . . or where he must base his cause of action, in whole or in part, on a violation by himself of the criminal or penal laws"⁵⁴

Similarly, courts have denied recovery to injured, intoxicated bar patrons under state dram shop statutes, holding that

[t]o allow recovery in favor of one who has voluntarily procured a quantity of liquor for his or her own consumption with full knowledge of its possible or probable

⁵³ "Humans generally have difficulty coping with risk and uncertainty. . . . [T]he probability of occurrence that is placed on a perceived risk is based on how easily the person can imagine instances of that risk. If an event has not happened to a person, and he or she cannot associate it with a certain risk, the person may perceive that it will not happen in the future. This fact is especially true for hazards that are somewhat under the individual's control, such as alcohol consumption. Adolescents may have greater difficulty than adults imagining risks associated with alcohol consumption, because they may believe the risks do not exist, are small, or are not related to them personally. . . . When consumers perceive little risk, they tend not to [spend the energy to find out additional information about the risk.]" Larry T. Patterson, Garland G. Hunnicutt, and Mary Ann Stutts, *Young Adults' Perceptions of Warnings and Risks Associated with Alcohol Consumption*, 11 J of Pub Pol and Marketing 96 (1992) (footnotes omitted). An identical argument can be made concerning underage purchasers' use of drugs.

⁵⁴ *Pappas v Clark*, 494 NW2d 245, 247 (Iowa Ct App 1992), quoting *Cole v Taylor*, 301 NW2d 766, 768 (Iowa 1981), quoting 1 CJS Actions § 13 at 996-97 (omissions in original).

results "would savor too much of allowing [said] person to benefit by his or her own wrongful act."⁵⁵

To permit an adult drug purchaser to recover for injuries resulting from an illegal drug sale would allow her to benefit from her own wrongs. Furthermore, granting adult drug purchasers a cause of action would eliminate the deterrent value of imposing upon drug purchasers the costs of self-inflicted injuries. The courts have noted that such a policy in the dram shop context would "be tantamount to creating a no-fault law for intoxicated persons."⁵⁶ Furthermore, as Oklahoma Supreme Court Chief Justice Opala has observed, shifting legal liability "tends to diminish an individual's sense of personal responsibility for the consequences of his (or her) own conduct. That in turn poses danger to the public."⁵⁷

An adult drug user should be held liable for her own actions because she has the last clear chance to avoid the injury. In the dram shop context, some courts have utilized this same rationale to deny injured alcohol consumers recovery from tavern owners for harm they cause themselves or the general public.⁵⁸

Although other courts have observed that drug addicts do not voluntarily purchase drugs and thus are not responsible for their injuries,⁵⁹ a drug addict should not be allowed to recover for her own deliberate, illegal act. Furthermore, if adult drug addicts were allowed to recover from their dealers, the courts would need to engage in the time-consuming inquiry of whether the purchaser was addicted at the time of the sale. Finally, if drug addicts were unable to recover for their injuries, a strong incentive would

⁵⁵ *Allen v County of Westchester*, 109 AD2d 475, 480, 492 NYS2d 772, 776 (NY App Div 1985) (alteration in original), quoting *Buntin v Hutton*, 206 Ill App 194, 199 (1917). See also *Bertelmann v Taas Associates*, 69 Haw 95, 100, 735 P2d 930, 933 (1987), quoting *Wright v Moffitt*, 437 A2d 554 (Del 1985) ("Drunken persons who harm themselves are solely responsible for their voluntary intoxication and cannot prevail under a common law or statutory basis.").

⁵⁶ *Allen*, 109 AD2d at 479, 492 NYS at 775.

⁵⁷ *Ohio Casualty Insurance Co. v Todd*, 813 P2d 508, 518 (Okla 1991) (Opala concurring) (emphasis omitted).

⁵⁸ "As between provider and consumer, the consumer has the last opportunity to avoid the effect of the alcohol, by not drinking or not driving, and thus as between the two, the negligence of the consumer is the greater." *Sutter v Hutchings*, 254 Ga 194, 327 SE2d 716, 719 n 7 (1985).

⁵⁹ The Ohio Supreme Court held that a man addicted to morphine was "merely the instrument, or the conduit through which this treacherous poison was transferred from the druggist's hands into his own system." *Flandermeyer v Cooper*, 85 Ohio St 327, 344-45, 98 NE 102, 106 (1912). If drug addicts are viewed as a mere "conduit," then they obviously cannot voluntarily purchase the drugs.

remain to encourage them to correct their behavior. For all of these reasons, the proposed statute would bar adult drug purchasers from recovering for their injuries from their dealers.⁶⁰

B. Drug Sales as the Proximate Cause of Injury

At common law, a drug dealer probably would not be found civilly liable for any injury to underage drug purchasers or third parties because the link between the sale and the injury would be perceived as tenuous and unforeseeable.⁶¹ However, this rationale is less persuasive today than it was in past years. Advances in medical knowledge and the public's increased awareness of the effects of drug use on society have made injury resulting from drug use more foreseeable.

The proposed statute would adopt the common law notion of proximate cause and modify it to reflect contemporary values and knowledge. To establish proximate cause under the common law, the plaintiff must prove both that the injury was in fact caused by the sale and that the injury was foreseeable to the defendant.⁶² In applying this standard, a court should recognize the wide range of known and foreseeable side effects resulting from drug use, including convulsions, cardiac failure, cerebral hemorrhaging, psychosis, depression, amnesia, and death.⁶³ Indeed, in 1991, emergency rooms treated over 400,000 people for drug abuse-related illnesses.⁶⁴ Thus, the possibility that a drug user might suffer injury as a result of the drug sale is foreseeable.

⁶⁰ The Michigan statute, entitled "The Drug Dealer Liability Act," allows some drug users to recover from their dealers provided that they are drug-free for "6 months before filing the action . . . [and they do] not use [drugs] during the pendency of the action." Mich Comp Law Ann § 691.1606(2) (West 1994). It is unclear what deterrence effect this provision has on drug users. The drug purchaser might treat this policy as a safety net, guaranteeing an ability to use drugs safely; if the user is truly injured, she can initiate a claim. Under this view, adult drug users have less incentive to quit.

⁶¹ See notes 29-31 and accompanying text.

⁶² See *Exxon Corp. v Quinn*, 726 SW2d 17, 21 (Tex 1987); *Farley v M M Cattle Co.*, 529 SW2d 751, 755 (Tex 1975); *Elder v Fisher*, 247 Ind 598, 605, 217 NE2d 847, 852 (1966) (explaining that to establish proximate cause, the injury "need be only a natural and probable result [of a negligent act]; and the consequence be one which in the light of the circumstances should reasonably have been foreseen or anticipated").

⁶³ Tebbett, 134 Drug Topics at 58 (cited in note 11).

⁶⁴ *Sourcebook of Criminal Justice Statistics 1992* 348 (1992), citing United States Department of Health and Human Services, National Institute on Drug Abuse, *Annual Emergency Room Data, 1991* 16, Statistical Series I, Number 11-A (1992). In 1991, 48,807 children between the ages of six and seventeen were admitted to emergency rooms for drug abuse related symptoms. *Id.*

Recognizing this change in public awareness, most jurisdictions addressing this issue have held drug dealers and suppliers criminally liable under the felony-murder rule for the drug-related deaths of their customers.⁶⁵ In these cases, the courts have held that the customer's death from use of the drug is not so unforeseeable as to break the causal link between the drug sale and the user's death.⁶⁶ Some courts have even held that the drug purchaser's subsequent use of the drug should be considered "at most to be concurrent [with the sale] rather than an independent intervening cause."⁶⁷ In this area of criminal law, the sale of the drug is the proximate cause of the resulting injury.

Moreover, in common law negligence actions, some courts have viewed a person addicted to a legal drug as having no free will and becoming "merely the instrument, or the conduit through which [the] treacherous poison was transferred from the druggist's hands into his own system."⁶⁸ In dram shop cases, similar arguments have been advanced concerning alcoholics.⁶⁹ Under this view of addiction, the drug dealer has directly and immediately caused injury by providing the illegal narcotic to the addict. Even under a less extreme interpretation, the purchaser's ultimate use of the drug would not sever the causal chain between the drug sale and the injury because the drug's subsequent use is eminently foreseeable.⁷⁰

A third party's injury resulting from the sale of drugs is similarly foreseeable. Drugs affect judgment, motor reflexes, and

⁶⁵ See Note, *An Unconstitutional Fiction: The Felony-Murder Rule as Applied to the Supply of Drugs*, 20 Ga L Rev 671 n 2 (1986).

⁶⁶ *Commonwealth v Catalina*, 407 Mass 779, 791, 556 NE2d 973, 980 (1990); *State v Ervin*, 242 NJ Super 584, 590, 577 A2d 1273, 1276 (1990) (finding constitutional a statute making any person who distributes a drug liable for a death resulting from its use, because the statute is limited to "the proximate consequences of inherently dangerous illegal activities").

⁶⁷ *State v Thomas*, 118 NJ Super 377, 380, 288 A2d 32, 34 (1972).

⁶⁸ *Flandermeyer v Cooper*, 85 Ohio St 327, 344-45, 98 NE 102, 106 (1912); *Holleman v Harward*, 119 NC 150, 156, 25 SE 972, 975 (1896) (holding that plaintiff's wife's addiction to opium was "the direct result of the use of the drug, which the [pharmacists] sold to her").

⁶⁹ "An intoxicated person is by definition not an able-bodied nor able-minded person." *El Chico Corp. v Poole*, 732 SW2d 306, 310 (Tex 1987). See *Bailey v Black*, 183 W Va 74, 76-77, 394 SE2d 58, 60-61 (W Va 1990) ("[I]f the buyer is an alcoholic, the seller may be feeding his addiction, which is an ongoing harm to the drunk himself.").

⁷⁰ "Concerning proximate causation, we find no distinction as does the old common law view, between the voluntary consumption of alcoholic beverages and the sale of the beverages in the chain of causation." *Brigance v Velvet Dove Restaurant, Inc.*, 725 P2d 300, 305 (Okla 1986) (emphasis omitted). See also *Prevatt v McClennan*, 201 S2d 780, 781 (Fla Dist Ct App 1967).

coordination, thereby leading to accidents that can injure the drug user or a third party.⁷¹ Drug use also incites secondary crime. In 1989, 25 percent of the inmates convicted of violent crimes were under the influence of illegal drugs when they committed their offenses.⁷²

Moreover, as with alcohol abuse, drug abuse increases the likelihood of accidents. Parallel reasoning about the widely-known dangers of alcohol has led some courts to reject the common law bar to third parties' recovery from dram shops when an intoxicated patron injures them. For example, as the Texas Supreme Court explained:

In addressing foreseeability, we know by common knowledge that alcohol distorts perception, slows reaction, and impairs motor skills, while operation of an automobile requires clear perception, quick reaction and adept motor skills.⁷³

Similarly, drugs can affect the body in ways identical to alcohol and create identical threats to the general public. Reversing the traditional common law ban on dram shop recovery, the courts have frequently emphasized the increased public awareness of the dangers of alcohol.⁷⁴ The law should similarly recognize the increase in public and scientific knowledge about the dangers of drug use. Thus, the proposed statute would properly regard drug sales as a potential legal cause of injury.

⁷¹ Tebbett, 134 Drug Topics at 58 (cited in note 11). These symptoms are especially symptomatic of LSD use. "Although it is thought to be impossible to overdose on LSD, deaths attributed to accidents while the individuals were under the influence of the drug are relatively common." Id.

⁷² *Sourcebook of Criminal Justice Statistics 1992* at 603 (cited in note 64), citing figures from Bureau of Justice Statistics, *Profile of Jail Inmates 1989*, Special Report NCJ-129097 8 (1991). More than 24 percent of the inmates convicted of sexual assault and more than 19 percent of the inmates convicted of homicide were under the influence of illegal drugs when they committed these offenses. Id.

⁷³ *El Chico Corp.*, 732 SW2d at 311.

⁷⁴ "[M]odern analyses have discarded the absolute rule of no liability in favor of an approach incorporating current legal understanding as dictated by conditions and circumstances of modern society." Id. at 310. See also *Rappaport v Nichols*, 31 NJ 188, 202, 156 A2d 1, 8 (1959) ("[T]he unreasonable risk of harm not only to the minor [who was served alcohol] or the intoxicated person but also to members of the traveling public may readily be recognized and foreseen.").

C. The Irrelevance of Assumption of Risk to Recovery Under the Proposed Statute

The common law denies recovery to a plaintiff who has "conducted himself as to disable himself from bringing an action for such invasion."⁷⁵ Thus, even where a defendant acted recklessly or negligently, a plaintiff who voluntarily assumed a risk of being harmed by the defendant's actions is normally barred from recovery.⁷⁶

Because third parties have assumed no risk, they would not be barred from recovery under this common law principle. Following this line of reasoning, the proposed statutes also permit these parties to recover for their injuries.

Similarly, underage purchasers would be allowed to recover under the statute. Like third parties, underage purchasers do not assume a risk of injury when they purchase and consume illegal narcotics from the drug dealer. In the dram shop context, courts have denied recovery to adult patrons who purchased and consumed alcohol because adults "implicitly acknowledge" and assume the risks inherent in consuming alcohol.⁷⁷ However, this common law principle does not extend to minors who, because of their age,

can neither appreciate nor willingly assume the risk involved [in drinking alcohol and] will not be taken to have exposed [themselves] to the risk of harm that arises from the tavernkeeper's negligent conduct.⁷⁸

Under this view, underage drug purchasers also do not "willingly assume the risk involved"⁷⁹ in purchasing and using drugs. Therefore, while adult drug purchasers' claims would fail under

⁷⁵ Restatement (Second) of Torts § 281 (cited in note 22).

⁷⁶ *Id.* at § 496A.

⁷⁷ "An imbibor who drinks intoxicants on the premises implicitly acknowledges the possibility that the tavern owner may negligently continue to serve him liquor even though he has become inebriated and accident-prone while in that condition." *Ohio Casualty Insurance Co. v Todd's Tavern*, 813 P2d 508, 517 (Okla 1991) (Opala concurring).

⁷⁸ *Id.* "In view of the legislative determination that minors are incompetent to assimilate responsibly the effects of alcohol and lack the legal capacity to do so, logic dictates that their consumption of alcohol does not, as a matter of law, constitute the intervening act necessary to break the chain of proximate causation and does not, as a matter of law, insulate one who provides alcohol to minors from liability for ensuing injury." *Ely v Murphy*, 207 Conn 88, 95, 540 A2d 54, 58 (1988). In other words, the court held that a minor is unable to assume the risk and thereby break the casual chain between the alcohol provider and the subsequent damages.

⁷⁹ *Ohio Casualty Insurance Co.*, 813 P2d at 517.

the proposed statute because of their assumption of the risk, underage purchasers, who by their nature are incapable of voluntarily assuming these risks, would be allowed to recover.

In sum, the proposed statute does not deviate from the principles established in modern common law negligence and dram shop cases. Instead, the proposed statute merely updates the doctrines to reflect modern realities. Drug dealers' sales of narcotics violate their duty of care to minors and to the general public when they cause foreseeable injuries for which the minors and third parties assumed no risk.

III. THE LEGISLATURE, NOT THE COURTS, SHOULD ESTABLISH CIVIL LIABILITY

Because the proposed statute merely incorporates modern common law principles, the courts could theoretically modify the existing common law and extend recovery to underage purchasers and third parties without legislative action. Nevertheless, the legislature is better positioned to establish this new cause of action.

As shown in Part I, the courts have been reluctant to interpret the common law to allow recovery from a drug dealer for injuries to third parties or underage purchasers. While many courts now recognize common law actions in dram shop cases, other courts have continued to adhere to the traditional common law prohibition on recovery in those cases. Some courts that have refused to establish common law civil liability for alcohol vendors have argued that the legislature is better able to reach this decision. For example, the Supreme Court of Kansas held that imposing civil liability under dram shop requires a determination of "what best serves the societal interest and need[.]" and it posited that "the legislature is best equipped to handle [this public policy decision]."⁸⁰ Other courts have refused to modify the traditional common law bar on civil recovery in dram shop cases because they consider the legislature better able than the judiciary to limit and define new causes of action.⁸¹

Additionally, legislative decisions more legitimately and effectively represent society's moral position on an issue.⁸² The

⁸⁰ *Ling v Jan's Liquors*, 237 Kan 629, 640, 703 P2d 731, 739 (1985). See also *Holmes v Circo*, 196 Neb 496, 504-05, 244 NW2d 65, 70 (1976).

⁸¹ *Yancey v Beverage House of Little Rock, Inc.*, 291 Ark 217, 218, 723 SW2d 826, 827 (1987); *Holmes*, 196 Neb at 504-05, 244 NW2d at 70.

⁸² For example, declaring an area a "nuclear free-zone" has no practical impact but

proposed civil liability statute represents a moral decision to hold drug dealers responsible for the injuries caused by their illegal activities. When confronted with these same problems in the dram shop context, many states have recognized the inadequacies of the common law and have enacted statutes providing civil recovery for those injured by intoxicated patrons of taverns rather than allowing the courts to alter the common law on a piecemeal basis.⁸³ Thus, the legislature is the appropriate body to effectuate the policy choice holding drug dealers responsible for compensating innocent victims.

CONCLUSION

Current law fails to hold drug dealers fully responsible for the damage they cause through their illegal drug trade. Therefore, the various state legislatures or Congress should enact a statute to recognize the duty of drug dealers not to harm the general public and minors. This statute would merely codify principles inherent in modern common law negligence and dram shop actions. It would require drug dealers whose sales injure a third party or an underage purchaser to compensate these parties for their injuries.

The proposed statute would deter drug dealers by requiring them to internalize the full cost of their trade. It would also maintain the common law bar on recovery for adult purchasers of illegal drugs to preclude them from benefitting from their voluntary illicit conduct. Moreover, the statute would supplement law enforcement by creating additional incentives to the victims of drug sales to identify drug dealers. Finally, innocent victims of drug sales, both third parties and underage purchasers, would be less likely to suffer the physical and economic consequences of narcotics trafficking because they would possess a reasonable chance of recovering damages from the drug dealers responsible for their injuries.

does allow a community to state its position on nuclear weapons.

⁸³ See Sipes, 8 Rev Litig at 1, 3-6 (cited in note 39).

